

(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

To prohibit discrimination on the basis of sex, sexual orientation, and gender identity; and to protect the free exercise of religion.

IN THE HOUSE OF REPRESENTATIVES

Mr. STEWART (for himself and _____) introduced the following bill; which was referred to the Committee on _____

A BILL

To prohibit discrimination on the basis of sex, sexual orientation, and gender identity; and to protect the free exercise of religion.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Fairness for All Act".

1 **SEC. 2. PROHIBITION AGAINST DISCRIMINATION OR SEG-**
2 **REGATION IN PLACES OF PUBLIC ACCOMMO-**
3 **DATION.**

4 Section 201 of the Civil Rights Act of 1964 (42
5 U.S.C. 2000a) is amended—

6 (1) in subsection (a), by inserting “sex, sexual
7 orientation, gender identity,” before “or national ori-
8 gin”;

9 (2) in subsection (b)—

10 (A) in paragraph (3), by striking “and” at
11 the end;

12 (B) by redesignating paragraph (4) as
13 paragraph (10);

14 (C) by inserting after paragraph (3) the
15 following:

16 “(4) any place of exercise, recreation, or amusement,
17 other than religious camps or religious retreat centers;

18 “(5) any provider of financial services, including
19 banks, credit unions, mortgage houses, brokers, and finan-
20 cial planners;

21 “(6) for the purpose of classifications enumerated in
22 subsection (a) and not described by section 1557 of the
23 Patient Protection and Affordable Care Act (42 U.S.C.
24 18116(a))—

25 “(A) any provider of medical services. It shall
26 not constitute a violation of this title to provide a

1 service, treatment, therapy, procedure, or drug on
2 the same medical terms or criteria applicable to indi-
3 viduals needing that service, treatment, therapy, pro-
4 cedure or drug, without regard to protected class
5 status;

6 “(B) any provider of mental health care, except
7 that this section shall not apply when the primary
8 objective is to assist a person in entering or sus-
9 taining a marriage, so long as the provider coordi-
10 nates a referral of the client to another qualified
11 mental health care provider who will provide the
12 needed service and the client is not in imminent dan-
13 ger of harming self or others;

14 “(C) nothing in subparagraph (B) shall apply
15 to a priest, pastor, rabbi, imam, or minister of any
16 faith while acting substantially in a ministerial ca-
17 pacity; and

18 “(D) a provider of medical services covered by
19 subparagraph (A) or a provider of mental health
20 care covered by subparagraph (B) may make evi-
21 dence-based medical determinations and may refer
22 patients when necessary for a patient’s best interests
23 and welfare, including professional expertise;

24 “(7) any place of or provider of transportation serv-
25 ices;

1 “(8) any provider of funeral services or burial plots,
2 except those that primarily limit their services or facilities
3 to those of a particular religion;

4 “(9) any store, shopping center, or online retailer or
5 provider of online services that has 15 or more employees
6 for each working day in each of 20 or more calendar weeks
7 in the current or preceding calendar year. This employee
8 threshold shall not apply to a claim of discrimination be-
9 cause of race, color, or national origin or to a place of
10 public accommodation covered under paragraphs (1)
11 through (8);” and

12 (D) by inserting after paragraph (10) the
13 following:

14 “(11)(A) The provisions of this title shall not
15 apply to—

16 “(i) any building or collection of buildings
17 that is used primarily as a denominational
18 headquarters, church administrative office, or
19 church conference center;

20 “(ii) a place of worship, such as a church,
21 synagogue, mosque, chapel, and its appurtenant
22 properties used primarily for religious purposes;

23 “(iii) a religious educational institution
24 and its appurtenant properties used primarily
25 for religious purposes;

1 “(iv) in connection with a religious celebra-
2 tion or exercise: a facility that is supervised by
3 a priest, pastor, rabbi, imam, or minister of any
4 faith, or religious certifying body, and that is
5 principally engaged in providing food and bev-
6 erages in compliance with religious dietary re-
7 quirements; or

8 “(v) any online operations or activities of
9 an organization exempt under this section.

10 “(B) The following shall not be a place of pub-
11 lic accommodation, even if used for a commercial
12 purpose, except within the area and during the time
13 that the property or facility is open to the public;
14 operated primarily for a commercial purpose; and
15 not primarily related to the inculcation, promotion,
16 or expression of religion—

17 “(i) other appurtenant properties or facili-
18 ties owned or operated by a church, by another
19 house of worship, or by a religious educational
20 institution; or

21 “(ii) a property owned or operated pri-
22 marily for noncommercial purposes by a non-
23 profit religious corporation that holds itself out
24 to the public as substantially religious, has as
25 its stated purpose in its organic documents that

1 it is religious, and is substantially religious in
2 its current operations.

(C) This
Section (11) shall
not apply to a
person or entity
that discriminates
because of race,
color, or national
origin with
respect to a
property or facility
enumerated in
(A) or (B).

3 “(12) Provided that equivalent treatment, serv-
4 ices, facilities, and benefits are made available and
5 without prejudicing rights or protections based on
6 any other protected class status—

7 “(A) nothing in this title that refers to
8 ‘sex’ shall be construed to prevent a fitness cen-
9 ter, spa, or similar place, whose services or fa-
10 cilities are intended for the exclusive use of per-
11 sons of the same sex, from providing the use of
12 those services or facilities exclusively to persons
13 of that sex or prohibit a place of public accom-
14modation from temporarily restricting access to
15 a fitness center, spa, pool, or similar place, ac-
16 cording to sex; and

17 “(B) a place of public accommodation shall
18 reasonably accommodate a patron who requests
19 greater privacy within a facility intended for the
20 exclusive use of persons of the same sex.

21 “(13) Nothing in this title shall be construed to
22 require or prohibit any person, or public or private
23 entity, to provide or pay for any benefit or service,
24 including the use of facilities, related to an abortion.
25 Nothing in this title shall be construed to permit a

1 penalty to be imposed on any person or any indi-
2 vidual because such person or individual is seeking
3 or has received any benefit or service related to a
4 legal abortion.”; and

5 (3) by adding at the end of subsection (e) the
6 following:

7 “(f) DEFINITIONS.—For purposes of this title:

8 “(1) The term ‘gender identity’ means the gen-
9 der-related identity, appearance, mannerisms, or
10 other gender-related characteristics of an individual,
11 without regard to the individual’s designated sex at
12 birth. A person’s gender identity can be shown by
13 providing evidence, including medical history, care or
14 treatment of the gender identity, consistent and uni-
15 form assertion of the gender identity, or other evi-
16 dence that the gender identity is sincerely held, part
17 of a person’s core identity, and not being asserted
18 for an improper purpose.

19 “(2) The term ‘sexual orientation’ means homo-
20 sexuality, heterosexuality, or bisexuality.

21 “(3) The term ‘online retailer or provider of on-
22 line services’ means a webpage by a commercial
23 business not enumerated in paragraph (11) that in-
24 vites the general public to purchase a good or service
25 by use of a credit card or similar payment device

1 over the internet. It does not mean a webpage that
2 gives information about a good or service, including
3 quality, price, or availability, but does not permit
4 such purchase directly from the webpage.

5 “(4) The terms ‘religion’ and ‘religious’ include
6 all aspects of religious belief, observance, and prac-
7 tice, whether or not compelled by, or central to, a
8 system of religion.

9 “(5) The term ‘religious corporation, associa-
10 tion, educational institution, or society’ includes—

11 “(A) a church, synagogue, mosque, temple,
12 or other house of worship;

13 “(B) a nonprofit corporation, association,
14 educational institution, society, or other non-
15 profit entity that is, in whole or in substantial
16 part, owned, supported, controlled, or managed
17 by a particular religion or by a particular
18 church, denomination, convention, or associa-
19 tion of churches or other houses of worship; or

20 “(C) a nonprofit corporation, association,
21 educational institution, society, or other non-
22 profit entity that holds itself out to the public
23 as substantially religious, has as its stated pur-
24 pose in its organic documents that it is reli-

1 gious, and is substantially religious in its cur-
2 rent operations.

3 “(g) ADDITIONAL FACILITIES NOT REQUIRED.—
4 Nothing in this title shall be construed to require the con-
5 struction of new or additional facilities.”.

6 **SEC. 3. PROHIBITION ON DISCRIMINATION IN FEDERALLY**
7 **FUNDED PROGRAMS.**

8 The Civil Rights Act of 1964 (42 U.S.C. 2000d) is
9 amended—

10 (1) in section 601, by inserting “sex, sexual ori-
11 entation, gender identity,” before “or national ori-
12 gin.”;

13 (2) in section 606, by striking “For the pur-
14 poses of this title” and inserting “Subject to section
15 607, for the purposes of this title”; and

16 (3) by adding at the end the following:

17 **“SEC. 607. PROGRAM OR ACTIVITY AND PROGRAM DEFINED**
18 **FOR PURPOSES OF RELIGIOUS ENTITIES AS**
19 **APPLIED TO SEX, SEXUAL ORIENTATION, OR**
20 **GENDER IDENTITY.**

21 “For the purposes of this title, as applied to sex, sex-
22 ual orientation, and gender identity, for any religious cor-
23 poration, association, educational institution, or society,
24 the term ‘program or activity’ and the term ‘program’ are
25 limited to any specific program or activity, or part thereof,

1 that receives Federal financial assistance. Any penalty or
2 loss of Federal financial assistance assessed against such
3 a religious entity shall be limited to the program or activ-
4 ity or program, or part thereof, that is determined to have
5 violated section 601.

6 **“SEC. 608. SAFEGUARDS FOR RELIGIOUS ORGANIZATIONS**
7 **RECEIVING ASSISTANCE.**

8 “(a) IN GENERAL.—An otherwise qualified religious
9 provider shall be eligible to receive Federal financial as-
10 sistance for a particular service without regard to the pro-
11 vider’s religious views or teachings, notwithstanding sec-
12 tion 2000d. Subject to this title, a religious organization
13 that applies for, or participates in, a program or activity
14 receiving Federal financial assistance shall retain its inde-
15 pendence and may continue to carry out its mission, in-
16 cluding the definition, development, and expression of its
17 religious beliefs.

18 “(b) SPECIFIC SAFEGUARDS.—Nothing in this title
19 prohibits a religious organization receiving Federal finan-
20 cial assistance from using space in its buildings and other
21 facilities to conduct its program or activities where there
22 is religious art, icons, messages, scriptures, or other sym-
23 bols. Additionally, the organization retains authority over
24 its internal governance and thus may have religious words
25 in the organization’s name, select members of its gov-

1 erning board based on religious criteria, and have religious
2 references in its mission statement and other governing
3 documents.

4 “(c) EDUCATIONAL AND CHILDCARE INSTITU-
5 TIONS.—A religious educational institution or daycare
6 center may enforce with reasonable consistency written re-
7 ligious standards in its admission criteria, educational pro-
8 grams, student retention policies, or residential life policy,
9 unless those standards are based on race, color, or na-
10 tional origin or would exclude or remove a student solely
11 because of a prohibited classification under section 601
12 with respect to that student’s parent or legal guardian.

13 “(d) MARRIAGE AND FAMILY EDUCATION,
14 STRENGTHENING, AND COUNSELING PROGRAMS.—For
15 purposes of sexual orientation and gender identity, a reli-
16 gious corporation, association, educational institution, or
17 society receiving Federal financial assistance shall be
18 deemed in compliance with section 601 notwithstanding
19 the content of any marriage or family education, strength-
20 ening, or counseling programming, provided that the re-
21 cipient does not exclude beneficiaries on the basis of sexual
22 orientation or gender identity.

23 “(1) REFERRAL OBLIGATION.—If a beneficiary
24 or prospective beneficiary objects to the religious
25 character of the recipient, the recipient will under-

1 take reasonable efforts as described in subsection
2 (d)(2) to identify and refer the beneficiary to an al-
3 ternative provider to which the beneficiary has no
4 objection; however, the recipient is not obligated to
5 guarantee that in every instance an alternative pro-
6 vider will be available.

7 “(2) AGENCY RESPONSIBILITIES.—Each agency
8 responsible for administering or supporting a social
9 service program with Federal financial assistance
10 shall establish policies and procedures designed to
11 ensure that—

12 “(A) appropriate and timely referrals are
13 made to an alternative provider;

14 “(B) all referrals are made in a manner
15 consistent with all applicable privacy laws and
16 regulations;

17 “(C) the recipient subject to subsection
18 (d)(1) notifies the agency of any referral;

19 “(D) such recipient has established a proc-
20 ess for determining whether the beneficiary has
21 contacted the alternative provider; and

22 “(E) each beneficiary of a marriage or
23 family education, strengthening, or counseling
24 program that receives Federal financial assist-
25 ance receives written notice of the protections

1 set forth in this section prior to enrolling in or
2 receiving services from such program.

3 “(3) RECIPIENT’S RESPONSIBILITIES.—The re-
4 ferral obligation of the recipient under section (d)(2)
5 shall be satisfied by the recipient if it—

6 “(A) makes appropriate and timely refer-
7 rals to an alternative provider;

8 “(B) refers in a manner consistent with all
9 applicable privacy laws and regulations;

10 “(C) notifies the agency of the referral;

11 “(D) has established a process for deter-
12 mining whether the beneficiary has contacted
13 the alternative provider; and

14 “(E) can demonstrate that each bene-
15 ficiary of a social service program received writ-
16 ten notice of the protections set forth in this
17 section prior to enrolling in or receiving services
18 from such program.

19 **“SEC. 609. SPECIALIZED FEDERAL FINANCIAL ASSISTANCE**
20 **TO AN ENTIRE ENTITY.**

21 “(a) Any religious corporation, association, edu-
22 cational institution, or society that is otherwise eligible for
23 Federal financial assistance that is awarded to entities to
24 support the safety or infrastructure of the entity cannot
25 be excluded from assistance because of its religious beliefs

1 or practices. Such assistance includes Federal financial as-
2 sistance for historic preservation, disaster recovery, or fa-
3 cilities security. The religious corporation, association,
4 educational institution, or society shall be deemed in com-
5 pliance with section 601, provided that funds used for pro-
6 curement from a third-party vendor must be used in a
7 manner that complies with section 601.

8 “(b) For the purposes of this subsection, a religious
9 educational institution or daycare center that receives
10 funds under the Richard B. Russell National School
11 Lunch Act shall not be deemed a recipient of Federal fi-
12 nancial assistance.

13 **“SEC. 610. FEDERAL FINANCIAL ASSISTANCE FOR ADOPT-**
14 **ION AND FOSTER CARE.**

15 “(a) CONGRESSIONAL FINDINGS AND DECLARATION
16 OF POLICY.—The Congress hereby finds and declares the
17 following:

18 “(1) At-risk children deserve a safe and caring
19 family, and reducing the number of vulnerable chil-
20 dren without a permanent home is in the Federal in-
21 terest.

22 “(2) There is a national deficit in the number
23 of adoptive and foster parents and the private agen-
24 cies qualified to serve these children. Federal and
25 State governments should cooperate to encourage

1 new agencies to join the effort to serve the needs of
2 vulnerable children, alongside private agencies that
3 have already been doing that crucial work for dec-
4 ades, including agencies whose commitment to serve
5 arises from profound religious convictions.

6 “(3) By providing safe and welcoming homes to
7 vulnerable children, adoptive and foster care parents
8 serve the best interests of children and contribute to
9 the common good of our communities in ways that
10 are irreplaceable. Such parents should be empowered
11 to adopt children based on their merits as parents,
12 without being thwarted by discriminatory obstacles.

13 “(4) By finding safe and welcoming homes for
14 vulnerable children, religious and other providers of
15 adoption and foster care services, facilitate connec-
16 tions between good parents and vulnerable children.
17 In doing so, such providers also contribute to the
18 common good of our communities in ways that are
19 irreplaceable.

20 “(5) The indirect funding program created by
21 this section is intended to be a permanent and fully
22 funded program that links vulnerable children to
23 good parents in order to serve the best interests of
24 children. This indirect funding program will do so by
25 ensuring that diverse adoption and foster-care pro-

1 viders, including religious providers, will continue to
2 receive Federal financial assistance.

3 “(6) Therefore, it is the policy of the Federal
4 Government to protect the best interests of at-risk
5 children by establishing minimum Federal standards
6 that guarantee the equal treatment of qualified fam-
7 ilies seeking to offer foster care or adoption and an
8 equal respect for the diversity of private agencies,
9 including religious agencies, that provide adoption
10 and foster care services. This section shall be con-
11 strued in a manner consistent with these findings
12 and declaration of policy.

13 “(b) NONDISCRIMINATION REQUIREMENTS.—Fed-
14 eral financial assistance for adoption, foster care, or re-
15 lated services is subject to section 601, unless otherwise
16 provided in this section. Any entity that receives Federal
17 financial assistance to perform adoption or foster care
18 placements or related services, or that contracts with an
19 entity that receives Federal financial assistance for those
20 services, except for a private agency when participating
21 in the indirect funding program as described under sub-
22 section (c)(2)(B) or (d)(1), may not in the course of per-
23 forming an adoption, foster care, or related service dis-
24 criminate against a prospective parent or a child because

1 of race, color, national origin, sex, sexual orientation, or
2 gender identity.

3 “(1) An entity unlawfully discriminates against
4 a prospective parent by—

5 “(A) denying to any qualified person equal
6 access to or equal treatment during the adop-
7 tion or foster care evaluation and placement
8 process because of the race, color, national ori-
9 gin, sex, sexual orientation or gender identity of
10 the qualified prospective adoptive or foster par-
11 ent or of the child involved;

12 “(B) delaying or denying the placement of
13 a child for adoption or into foster care because
14 of the race, color, national origin, sex, sexual
15 orientation, or gender identity of the qualified
16 prospective adoptive or foster parent, or of the
17 child involved;

18 “(C) requiring different or additional
19 screenings, processes, or procedures for adop-
20 tive or foster care placement because of the
21 race, color, national origin, sex, sexual orienta-
22 tion, or gender identity of the qualified prospec-
23 tive adoptive or foster parent, or of the child in-
24 volved;

1 “(D) requiring a qualified prospective fos-
2 ter parent to subscribe to subparagraph (D) or
3 (E) of section (b)(2); or

4 “(E) excluding a qualified prospective
5 adoptive or foster parent because of the par-
6 ent’s religion.

7 “(2) An entity unlawfully discriminates against
8 a child by—

9 “(A) denying to any qualified person equal
10 access to or equal treatment during the adop-
11 tion or foster care evaluation and placement
12 process because of the race, color, national ori-
13 gin, sex, sexual orientation, or gender identity
14 of the qualified prospective adoptive or foster
15 parent, or of the child involved;

16 “(B) delaying or denying the placement of
17 a child for adoption or into foster care because
18 of the race, color, national origin, sex, sexual
19 orientation, or gender identity of the qualified
20 prospective adoptive or foster parent, or of the
21 child involved;

22 “(C) requiring different or additional
23 screenings, processes, or procedures for adop-
24 tive or foster care placement because of the
25 race, color, national origin, sex, sexual orienta-

tion, or gender identity of the qualified prospective adoptive or foster parent, or of the child involved;

“(D) treating a child in the legal custody of the State inconsistently with the child’s gender identity, as demonstrated by the child’s medical history, care or treatment of the child’s gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, is part of the child’s core identity, and is not being asserted for an improper purpose; or

“(E) subjecting any child in the legal custody of the State to any practice or treatment that seeks to change the child’s sexual orientation or gender identity. It shall be lawful for a professional counselor licensed by the State to assist a minor, without regard to sexual orientation or gender identity, to prevent or address unlawful conduct or unsafe sexual practices.

“(c) INDIRECT FUNDING OF ADOPTION AND FOSTER CARE SERVICES.—

“(1) ESTABLISHMENT OF INDIRECT FUNDING PROGRAM.—The Department of Health and Human

1 Services, the Social Security Administration, the De-
2 partment of State, and any other agency authorized
3 by Federal law to administer Federal financial as-
4 sistance for the support of adoption and foster care
5 services shall issue final rules within two years of
6 the enactment of this Act to create an indirect fund-
7 ing program that delivers Federal financial assist-
8 ance to eligible prospective parents for the purpose
9 of obtaining such services through a qualified private
10 agency that they select.

11 “(A) This indirect funding program will
12 entitle a qualified State resident to receive a
13 certificate to assist with the costs of a personal
14 assessment, background check, home study, en-
15 dorsement, certification of a person’s eligibility
16 to act as the guardian of a child in foster care
17 or as the parent of a child available for adop-
18 tion, and placement of a child with an eligible
19 individual or family.

20 “(B) A substantial proportion of appro-
21 priated Federal financial assistance for adop-
22 tion or foster care services, including assistance
23 available under part B and part E of title IV
24 of the Social Security Act, shall be allocated to
25 fund the indirect funding program through the

1 issuance of a certificate to eligible prospective
2 parents.

3 “(C) Each certificate shall be worth an
4 amount to be determined through agency rule-
5 making, but in no event less than \$3,000 as in-
6 dexed to the Consumer Price Index as of Janu-
7 ary 1, 2019.

8 “(D) Participation in this indirect funding
9 program may not be delayed or denied because
10 of a State resident’s race, color, national origin,
11 religion, sex, sexual orientation, or gender iden-
12 tity.

13 “(E) The responsible Federal agencies
14 shall establish policies and procedures designed
15 to ensure that where a referral is required by
16 this section—

17 “(i) an appropriate and timely referral
18 is made to an alternative provider;

19 “(ii) all referrals are made in a man-
20 ner consistent with applicable privacy laws
21 and regulations;

22 “(iii) the provider of adoption and fos-
23 ter care placement or related services noti-
24 fies the agency of any referral; and

1 “(iv) each applicant for and recipient
2 of adoption or foster care placement or re-
3 lated services from a provider that receives
4 Federal financial assistance will receive
5 written notice from the provider of the pro-
6 tections set forth in this section when ap-
7 plying for or receiving such services.

8 “(2) IMPLEMENTATION OF INDIRECT FUNDING
9 PROGRAM.—

10 “(A) APPROVED STATE PLAN.—To be eli-
11 gible for Federal financial assistance for adop-
12 tion or foster care services under part B or part
13 E of title IV of the Social Security Act, a State
14 must develop a written plan approved by the
15 Secretary of the Department of Health and
16 Human Services providing that—

17 “(i) the State has established rules,
18 policies, and procedures within 6 months
19 after issuance of final rules under sub-
20 section (c)(1) that ensures the State’s full
21 participation in the indirect funding pro-
22 gram by making available to each qualified
23 State resident on request a certificate as
24 prescribed by subsection (c)(1), to be used
25 solely for the services enumerated in sub-

1 section (c)(1). This certificate may com-
2 mingle funding from Federal and State
3 sources, and such commingled revenues
4 shall be deemed Federal financial assist-
5 ance;

6 “(ii) the State uses its best efforts to
7 increase the number of private organiza-
8 tions within each catchment area that are
9 qualified to provide foster care and adop-
10 tion services, including organizations will-
11 ing to serve all qualified prospective par-
12 ents;

13 “(iii) the State publishes and main-
14 tains a current list of licensed adoption
15 and foster care providers with offices in
16 the State, by catchment area, which list
17 will identify providers that serve all appli-
18 cants, as well as those that serve particular
19 communities and those that provide par-
20 ticular services;

21 “(iv) the State performs a prompt and
22 cost-free eligibility assessment for every
23 prospective parent who applies for a cer-
24 tificate, informs every eligible prospective
25 parent of the licensed adoption and foster

1 care providers in the participant's
2 catchment area, and may provide addi-
3 tional information to facilitate the prospec-
4 tive parent's selection of a provider;

5 “(v) any State resident eligible to act
6 as a foster parent or adoptive parent has
7 an equal opportunity to obtain adoption or
8 foster care related services from a provider
9 who accepts the certificate described in
10 section (c)(1); and

11 “(vi) when a qualified individual seek-
12 ing adoption or foster care placement or
13 related services is unable to obtain such
14 services from a particular provider—

15 “(I) there is at least one other
16 willing and qualified provider of such
17 service in the same or adjacent
18 catchment area that will serve all
19 qualified individuals;

20 “(II) the provider gives an appro-
21 priate and timely referral to at least
22 one alternative provider;

23 “(III) each referral is made in a
24 manner consistent with applicable pri-
25 vacy laws and regulations; and

1 “(IV) the provider of adoption
2 and foster care placement or related
3 services notifies the State of any re-
4 ferral that is issued.

5 “(B) PROTECTIONS FOR PRIVATE AGEN-
6 CIES.—No State or local government may—

7 “(i) deny any licensed provider of
8 adoption or foster care placement or re-
9 lated services the opportunity to partici-
10 pate in the certificate program prescribed
11 by subsection (c)(1);

12 “(ii) deny any licensed provider of
13 adoption or foster care placement or re-
14 lated services reasonable payment for serv-
15 ices actually rendered in reliance on a cer-
16 tificate;

17 “(iii) require a provider of adoption or
18 foster care placement or related services to
19 perform such services in a particular in-
20 stance as a condition of participating in
21 the certificate program prescribed by sub-
22 section (c)(1), unless such service is re-
23 quired by Federal law or imposed pursuant
24 to an agreement between the provider and
25 the State that compensates the provider

1 for such service exclusively with State reve-
2 nues; and

3 “(iv) withhold, suspend, or terminate
4 contracts, cooperative agreements, grants,
5 or other financial assistance when a pro-
6 vider of adoption or foster care placement
7 or related services takes any action per-
8 mitted under this title.

9 “(3) AUTHORITY TO WITHHOLD FUNDS.—If a
10 State fails to participate in the indirect funding pro-
11 gram, develop an appropriate State plan, or to com-
12 ply with this section in any other respect, the Sec-
13 retary shall, after appropriate notice and failure to
14 comply, withhold payment to the State of amounts
15 otherwise payable under part B or E of title IV of
16 the Social Security Act (42 U.S.C. 621 et seq., 670
17 et seq.), to the extent that the Secretary deems the
18 withholding necessary to induce compliance. A State
19 may elect not to comply with its duties under this
20 section on condition that it declines Federal financial
21 assistance for adoption and foster care.

22 “(d) PRIVATE RECIPIENTS OF FEDERAL FINANCIAL
23 ASSISTANCE.—

24 “(1) PROTECTION FOR DIVERSE PROVIDERS.—

25 A private organization that is eligible to receive Fed-

1 eral financial assistance through the certificate pro-
2 gram prescribed by subsection (c)(1) for providing
3 any adoption or foster care placement or related
4 services may—

5 “(A) decline to accept a certificate without
6 being obligated to perform a particular service,
7 despite receiving certificates to perform other
8 covered adoption or foster care services, so long
9 as the provider gives a referral to the certificate
10 holder consistent with section (c)(2)(A)(vi)(II)–
11 (IV); or

12 “(B) after accepting a certificate, facilitate
13 a mutually voluntary referral that does not un-
14 reasonably delay or disrupt the adoption or fos-
15 ter care evaluation and placement process.

16 “(2) MISREPRESENTATION.—After accepting a
17 certificate, a provider of adoption or foster care serv-
18 ices may terminate its relationship with a prospec-
19 tive parent who makes a material misrepresentation
20 of a fact that the prospective parent knew or should
21 have known that the agency specifically requested.
22 Such agency shall provide a referral consistent with
23 subsection (c)(2)(A)(vi)(II)–(IV) and shall not lose
24 its right under subsection (c)(2)(B)(ii) to reasonable
25 payment for services actually performed.

1 “(3) PROTECTION FOR CUSTODIAL PARENTS.—

2 A private organization that has received Federal fi-
3 nancial assistance through the certificate program
4 prescribed by subsection (c)(1) shall not discriminate
5 against the custodial parent of a child in foster care
6 because of the custodial parent’s race, color, national
7 origin, religion, sex, sexual orientation, or gender
8 identity with respect to the monitoring of a parent
9 whom the provider has previously endorsed or with
10 whom the provider has placed a child.

11 “(e) MISCELLANEOUS.—

12 “(1) CUSTODY OF CHILD IN FOSTER CARE.—

13 For purposes of this section, a child in foster care
14 shall be deemed to be in the legal custody of the
15 State.

16 “(2) RULE OF CONSTRUCTION.—Nothing in
17 this section shall be construed to prohibit an entity
18 receiving Federal financial assistance for adoption,
19 foster care, or related services from making an indi-
20 vidualized placement assessment in the best interest
21 of the child’s health, safety, and welfare.

22 “(3) EFFECTIVE DATES.—

23 “(A) IN GENERAL.—Except as described in
24 subsection (e)(1)(B), the protections under sub-

1 section (b) shall become effective on the date of
2 enactment.

3 “(B) RELIGIOUS PROVIDER EXEMPTION.—

4 “(i) Section (b)(1) shall come into ef-
5 fect with respect to a religious adoption or
6 foster care provider 12 months after the
7 State where the provider operates has im-
8 plemented the certificate program as de-
9 scribed in section (c)(2)(A).

10 “(ii) If the certificate program is not
11 substantially funded as required by sub-
12 section (c), the protections described by
13 subsection (b)(1) shall become unenforce-
14 able as to a religious adoption or foster
15 care provider until funding is provided or
16 restored.

17 “(iii) For purposes of this section, ‘re-
18 ligious adoption or foster care provider’
19 means a licensed or accredited nonprofit
20 provider of adoption or foster care services
21 that—

22 “(I) is in whole or substantial
23 part, owned, supported, controlled, or
24 managed by a particular religion or by
25 a particular church, denomination,

1 convention, or association of churches
2 or other houses of worship; or

3 “(II) holds itself out to the public
4 as substantially religious, has as its
5 stated purpose in its organic docu-
6 ments that it is religious, and is sub-
7 stantially religious in its current oper-
8 ations.

9 “(4) PRIVATE RIGHTS OF ACTION.—

10 “(A) Nothing in this section shall be con-
11 strued to authorize a right of action against a
12 private organization for the exercise of rights
13 provided under subsection (d)(1).

14 “(B) A private right of action may be
15 brought by a private organization under section
16 1107.

17 “(5) SUPPLANTING PROHIBITED.—Any Federal
18 funds received under this section shall be used to
19 supplement, not supplant, non-Federal funds that
20 would otherwise be available for activities funded
21 under this subchapter.

22 “(6) EFFECT ON FEDERAL LAWS RESPECTING
23 RACIAL DISCRIMINATION.—Nothing in this section
24 shall be construed to alter, affect, or supersede any
25 Federal law that addresses discrimination because of

1 race, color, or national origin by any State or private
2 organization that receives Federal financial assist-
3 ance for adoption or foster care placement or related
4 services.

5 “(7) APPLICATION TO STATES WITH WAIV-
6 ERS.—For any State that, on the date of enactment
7 of this Act, has in effect a waiver approved under
8 section 1130 of the Social Security Act (42 U.S.C.
9 1320a–9), the amendments to this title shall not
10 apply to that State before the expiration of the waiv-
11 er (determined without regard to any extensions), to
12 the extent that an amendment is inconsistent with
13 the terms of the waiver.

14 “(8) EFFECT ON STATE LAWS.—Nothing in
15 this section shall be construed to supersede a State
16 or local law, policy, or contract addressing the legal
17 conditions of receiving Government funding for
18 adoption or foster care services, provided that the
19 State or local law does not directly conflict with this
20 section.

21 **“SEC. 611. SEX-SPECIFIC SEGREGATION OR PROGRAMS.**

22 “(a) If sex segregation or sex-specific programming
23 is necessary to the essential operation of a program or
24 activity, nothing in this title shall prevent any such pro-
25 gram or activity from considering an individual’s sex, pro-

1 vided that where appropriate to accomplish the purpose
2 of the program or activity, individuals are treated in ac-
3 cordance with their gender identity.

4 “(b) An educational institution receiving Federal fi-
5 nancial assistance shall reasonably accommodate a student
6 who requests greater privacy with respect to the use of
7 a facility designated for the exclusive use of persons of
8 the same sex, provided that the accommodation does not
9 exclude any student from such a facility to which the stu-
10 dent has a right of access or otherwise prejudice any right
11 or privilege protected under this title.

12 “(c) Nothing in this title shall be construed to alter
13 or affect the Violence Against Women Act of 1994.

14 **“SEC. 612. NEUTRALITY WITH RESPECT TO ABORTION.**

15 “Nothing in this title shall be construed to require
16 or prohibit any person, or public or private entity, to pro-
17 vide or pay for any benefit or service, including the use
18 of facilities, related to an abortion. Nothing in this title
19 shall be construed to permit a penalty to be imposed on
20 any person or any individual because such person or indi-
21 vidual is seeking or has received any benefit or service re-
22 lated to a legal abortion.

23 **“SEC. 613. NO EFFECT ON TITLE IX.**

24 “Nothing contained in this title shall be construed to
25 alter or affect title IX of the Education Amendments of

1 1972 (20 U.S.C. 1681 et seq.). Any claim that a person
2 has been excluded because of sex from participation in,
3 or denied the benefits of, or subjected to discrimination
4 with respect to any education program or activity that re-
5 ceives Federal financial assistance shall be governed by
6 title IX and not this title.

7 **“SEC. 614. ADDITIONAL DEFINITIONS.**

8 “For purposes of this title:

9 “(1) The term ‘gender identity’ means the gen-
10 der-related identity, appearance, mannerisms, or
11 other gender-related characteristics of an individual,
12 without regard to the individual’s designated sex at
13 birth. A person’s gender identity can be shown by
14 providing evidence, including medical history, care or
15 treatment of the gender identity, consistent and uni-
16 form assertion of the gender identity, or other evi-
17 dence that the gender identity is sincerely held, part
18 of a person’s core identity, and not being asserted
19 for an improper purpose.

20 “(2) The terms ‘religion’ and ‘religious’ include
21 all aspects of religious belief, observance, and prac-
22 tice, whether or not compelled by, or central to, a
23 system of religion.

24 “(3) The term ‘religious corporation, associa-
25 tion, educational institution, or society’ includes—

1 “(A) a church, synagogue, mosque, temple,
2 or other house of worship;

3 “(B) a nonprofit corporation, association,
4 educational institution, society, or other non-
5 profit entity that is, in whole or substantial
6 part, owned, supported, controlled, or managed
7 by a particular religion or by a particular
8 church, denomination, convention, or associa-
9 tion of churches or other houses of worship; or

10 “(C) a nonprofit corporation, association,
11 educational institution, society, or other non-
12 profit entity that holds itself out to the public
13 as substantially religious, has as its stated pur-
14 pose in its organic documents that it is reli-
15 gious, and is substantially religious in its cur-
16 rent operations.

17 “(4) The term ‘religious educational institution’
18 includes any preschool, primary, secondary or post-
19 secondary educational institution that is—

20 “(A) in whole or in substantial part,
21 owned, supported, controlled, or managed by a
22 particular religion or by a particular church, de-
23 nomination, convention, or association of
24 churches or other houses of worship; or

1 “(B) a nonprofit corporation organized for
2 educational purposes that holds itself out to the
3 public as substantially religious, has as its stat-
4 ed purpose in its organic documents that it is
5 religious, and is substantially religious in its
6 current operations.

7 “(5) The term ‘sexual orientation’ means homo-
8 sexuality, heterosexuality, or bisexuality.”.

9 **SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.**

10 (a) DEFINITIONS.—Section 701 of the Civil Rights
11 Act of 1964 (42 U.S.C. 2000e) is amended—

12 (1) in subsection (j) by inserting “(1)” after
13 “(j)”;

14 (2) in subsection (j)(1) by inserting “, after ini-
15 tiating and engaging in an affirmative and bona fide
16 effort,” after “unable”;

17 (3) in subsection (j)(1) by striking “an employ-
18 ee’s” and all that follows through “religious” and in-
19 serting “an employee’s religious”;

20 (4) by adding at the end of subsection (j)(1)
21 the following:

22 “(2)(A) In this subsection, the term ‘employee’
23 includes an employee (as defined in subsection (f)),
24 or a prospective employee, who, with or without rea-
25 sonable accommodation, is qualified to perform the

1 essential functions of the employment position that
2 such individual holds or desires.

3 “(B) In this paragraph, the term ‘perform the
4 essential functions’ includes carrying out the core re-
5 quirements of an employment position and does not
6 include carrying out practices relating to clothing,
7 practices relating to taking time off, or other prac-
8 tices that may have a temporary or tangential im-
9 pact on the ability to perform job functions, if any
10 of the practices described in this subparagraph re-
11 strict the ability to wear religious clothing, to take
12 time off for a holy day, or to participate in a reli-
13 gious observance or practice.

14 “(3) In this subsection, the term ‘undue hard-
15 ship’ means an accommodation requiring significant
16 difficulty or expense.

17 “(A) For purposes of determining whether
18 an accommodation requires significant difficulty
19 or expense, factors to be considered in making
20 the determination shall include—

21 “(i) the identifiable cost of the accom-
22 modation, including the costs of loss of
23 productivity and of retraining or hiring
24 employees or transferring employees from
25 one facility to another;

1 “(ii) the overall financial resources
2 and size of the employer involved, relative
3 to the number of its employees;

4 “(iii) for an employer with multiple
5 facilities, the geographic separateness or
6 administrative or fiscal relationship of the
7 facilities; and

8 “(iv) whether the accommodation will
9 obstruct the employer from providing its
10 customers or clients the full and equal en-
11 joyment of the goods, services, facilities,
12 privileges, advantages, and accommoda-
13 tions offered.

14 “(B) An employer shall not be required to
15 provide an accommodation that will result in
16 the violation of Federal or State law nor result
17 in liability for a hostile work environment.”;
18 and

19 (5) by inserting after subsection (n) the fol-
20 lowing:

21 “(o)(1) The term ‘gender identity’ means the gender-
22 related identity, appearance, mannerisms, or other gender-
23 related characteristics of an individual, without regard to
24 the individual’s designated sex at birth. A person’s gender
25 identity can be shown by providing evidence, including

1 medical history, care or treatment of the gender identity,
2 consistent and uniform assertion of the gender identity,
3 or other evidence that the gender identity is sincerely held,
4 part of a person's core identity, and not being asserted
5 for an improper purpose.

6 “(2) The term ‘sexual orientation’ means homosex-
7 uality, heterosexuality, or bisexuality.

8 “(3) The terms ‘religion’ and ‘religious’ include all
9 aspects of religious belief, observance, and practice, wheth-
10 er or not compelled by, or central to, a system of religion.

11 “(4) The term ‘religious corporation, association,
12 educational institution, or society’ includes—

13 “(A) a church, synagogue, mosque, temple, or
14 other house of worship;

15 “(B) a nonprofit corporation, association, edu-
16 cational institution, society, or other nonprofit entity
17 that is, in whole or substantial part, owned, sup-
18 ported, controlled, or managed by a particular reli-
19 gion or by a particular church, denomination, con-
20 vention, or association of churches or other houses
21 of worship; or

22 “(C) a nonprofit corporation, association, edu-
23 cational institution, society, or other nonprofit entity
24 that holds itself out to the public as substantially re-
25 ligious, has as its stated purpose in its organic docu-

1 ments that it is religious, and is substantially reli-
2 gious in its current operations.”.

3 (b) EXEMPTION.—Section 702(a) of the Civil Rights
4 Act of 1964 (42 U.S.C. 2000e–1(a)) is amended—

5 (1) by inserting “(1)” after “(a)”;

6 (2) by striking “State, or” and inserting the
7 following:

8 “State.

9 “(2)(A) This title shall not apply”; and

10 (3) by adding at the end of paragraph (2) the
11 following:

12 “(B) EXEMPT ORGANIZATIONS.—With respect
13 to claims of employment discrimination because of
14 sexual orientation or gender identity, nothing in this
15 subchapter shall apply to the following:

16 “(i) a church or its integrated auxiliaries,
17 a convention or association of churches, or a re-
18 ligious order, as described in section
19 6033(a)(3)(A)(i) and section 6033(a)(3)(A)(iii)
20 of the Internal Revenue Code of 1986;

21 “(ii) a religious organization described in
22 sections 501(c)(3) and 509(a)(1), (2), or (3)
23 that is covered by an Internal Revenue Service
24 group exemption letter issued to a church or a
25 convention or association of churches;

1 “(iii) a religious educational institution
2 that is eligible for exemption under section
3 703(e)(2) of this subchapter;

4 “(iv) a religious corporation, association,
5 or society under section 702(a) of this sub-
6 chapter that is eligible for tax-exempt status
7 under section 501(c)(3) of the Internal Revenue
8 Code of 1986 and that employs only individuals
9 of the employer’s religion, unless the employee
10 demonstrates that the employer has not applied
11 with reasonable consistency its religious stand-
12 ard cited as the reason for the adverse employ-
13 ment action; or

14 “(v) any association exclusively composed
15 of employers exempt under subparagraphs
16 (2)(B)(i)-(iv).

17 “(C) A claim under this subchapter
18 against an employer described by section
19 702(a)(2)(B) for discrimination because of sex
20 shall not include claims of discrimination be-
21 cause of sexual orientation or gender identity.
22 This provision shall not otherwise affect claims
23 of sex discrimination, and nothing in this provi-
24 sion shall prevent a person, regardless of sexual

1 orientation or gender identity, from bringing a
2 claim of sex discrimination.

3 “(D) No religious corporation, association,
4 or society otherwise eligible under section
5 (2)(B)(iv) of this section shall be ineligible be-
6 cause of nonrecognition under section 501(c)(3)
7 of the Internal Revenue Code, unless such tax
8 treatment is consistent with section
9 501(c)(3)(B) of that Code.

10 “(E) No employer whose primary purpose
11 and activity is to deliver medical services shall
12 be eligible for the exemptions under section
13 702(a)(2)(B).

14 “(F) Nothing in this section shall prejudice
15 rights and defenses available under sections
16 702(a) and 703(e)(2).”.

17 (c) UNLAWFUL EMPLOYMENT PRACTICES.—Section
18 703 of such Act (42 U.S.C. 2000e–2) is amended—

19 (1) except in subsection (e), by inserting “sex-
20 ual orientation, gender identity,” immediately before
21 “or national origin” each place it appears;

22 (2) in subsection (e)(1), by striking “enter-
23 prise,” and inserting “enterprise, if an individual is
24 recognized as qualified in accordance with gender

1 identity when sex is a bona fide occupational quali-
2 fication,”;

3 (3) in the heading of subsection (m), by strik-
4 ing “SEX,” and inserting “SEX, SEXUAL ORIENTA-
5 TION, GENDER IDENTITY,”; and

6 (4) by adding at the end the following:

7 “(o)(1) In this section:

8 “(A) The term ‘employee’ has the meaning
9 given the term in section 701(j)(2).

10 “(B) The term ‘leave of general usage’ means
11 leave provided under the policy or program of an
12 employer, under which—

13 “(i) an employee may take leave by adjust-
14 ing or altering the work schedule or assignment
15 of the employee according to criteria deter-
16 mined by the employer; and

17 “(ii) the employee may determine the pur-
18 pose for which the leave is to be utilized.

19 “(2) For purposes of determining whether an em-
20 ployer has committed an unlawful employment practice
21 under this title by failing to provide a reasonable accom-
22modation to the religious observance or practice of an em-
23 ployee, for an accommodation to be considered to be rea-
24 sonable, the accommodation shall remove the conflict be-

1 tween employment requirements and the religious observ-
2 ance or practice of the employee.

3 “(3) An employer shall be considered to commit such
4 a practice by failing to provide such a reasonable accom-
5modation for an employee if the employer refuses to per-
6 mit the employee to utilize leave of general usage to re-
7 move such a conflict solely because the leave will be used
8 to accommodate the religious observance or practice of the
9 employee.”.

10 (d) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—
11 Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C.
12 2000c-3) is amended—

13 (1) in subsection (b) by inserting “sexual ori-
14 entation, gender identity,” before “national origin”
15 each place it appears;

16 (2) in subsection (b) by striking “employment.”
17 and inserting “employment, if an individual is recog-
18 nized as qualified in accordance with gender identity
19 when sex is a bona fide occupational qualification.”;
20 and

21 (3) by inserting after subsection (b) the fol-
22 lowing:

23 “(c) PROHIBITED SANCTIONS FOR CERTAIN EM-
24 PLOYEE SPEECH.—

1 “(1) An employee may express the employee’s
2 religious, political, or moral beliefs in the workplace
3 in a reasonable, nondisruptive, and nonharassing
4 way on equal terms with similar types of expression
5 of beliefs allowed by the employer in the workplace,
6 unless the expression is in direct and substantial
7 conflict with the essential business-related interests
8 of the employer.

9 “(2) An employer may not discharge, demote,
10 terminate, or refuse to hire any person, or retaliate
11 against, harass, or discriminate in matters of com-
12 pensation or in terms, privileges, and conditions of
13 employment against any person otherwise qualified
14 for employment, for lawful expression or expressive
15 activity outside of the workplace regarding the per-
16 son’s beliefs that—

17 “(A) marriage is or should be recognized
18 as a union of one man and one woman, or one
19 woman and one woman, or one man and one
20 man; or

21 “(B) sexual activity should or should not
22 be reserved for spouses within a marriage.

23 The employee’s expression is not protected under
24 subsection (c)(2) if it directly and materially im-

1 pedes the employee's performance of an essential job
2 function.

3 “(3) Paragraphs (1) and (2) shall not apply to
4 a nonprofit organization that operates to express or
5 advocate particular viewpoints, or to an employer
6 that is a religious corporation, association, edu-
7 cational institution, or society covered by section
8 701(o)(4).”.

9 (e) CLAIMS.—Section 706(g)(2)(A) of the Civil
10 Rights Act of 1964 (42 U.S.C. 2000c-5(g)(2)(A)) is
11 amended by striking “sex,” and inserting “sex, sexual ori-
12 entation, gender identity,”.

13 (f) EMPLOYMENT BY FEDERAL GOVERNMENT.—Sec-
14 tion 717 of the Civil Rights Act of 1964 (42 U.S.C.
15 2000e-16) is amended—

16 (1) in subsection (a), by striking “sex,” and in-
17 serting “sex, sexual orientation, gender identity,”;
18 and

19 (2) in subsection (c), by striking “sex” and in-
20 serting “sex, sexual orientation, gender identity,”.

21 (g) GOVERNMENT EMPLOYEE RIGHTS ACT OF
22 1991.—The Government Employee Rights Act of 1991
23 (title III of Public Law 102-166; 42 U.S.C. 2000c-16 et
24 seq.) is amended—

1 (1) in section 301(b), by striking “sex,” and in-
2 serting “sex, sexual orientation, gender identity,”;
3 and

4 (2) in section 302(a)(1), by striking “sex,” and
5 inserting “sex, sexual orientation, gender identity.”.

6 (h) ADDITIONAL FACILITIES NOT REQUIRED.—The
7 Civil Rights Act of 1964 (42 U.S.C. 2000e–18) is amend-
8 ed by adding at the end the following:

9 “SEC. 719. ‘Nothing in this subchapter shall be con-
10 strued to require the construction of new or additional fa-
11 cilities.’”.

12 (i) PRIVACY IN SEX-DESIGNATED FACILITIES.—The
13 Civil Rights Act of 1964 (42 U.S.C. 2000e–19), as amend-
14 ed by subsection (h), is amended by adding at the end
15 the following:

16 “SEC. 720. If equivalent facilities and benefits are
17 made available and without regard to a prohibited classi-
18 fication under this subchapter, an employer shall reason-
19 ably accommodate an employee who requests greater pri-
20 vacy within a facility intended for the exclusive use of per-
21 sons of the same sex.”.

22 (j) INTERVENTION.—Section 902 of the Civil Rights
23 Act of 1964 (42 U.S.C. 2000h–2) is amended by inserting
24 “sexual orientation, gender identity,” before “or national
25 origin,”.

1 (k) CONGRESSIONAL ACCOUNTABILITY ACT OF
2 1995.—Section 201(a)(1) of the Congressional Account-
3 ability Act of 1995 (2 U.S.C. 1311(a)(1)) is amended by
4 inserting “sexual orientation, gender identity,” before “or
5 national origin,”.

6 (l) TITLE 5, UNITED STATES CODE.—Chapter 23 of
7 title 5, United States Code, is amended—

8 (1) in section 2301(b)(2), by striking “sex,”
9 and inserting “sex, sexual orientation, gender iden-
10 tity,”; and

11 (2) in section 2302—

12 (A) in subsection (b)(1)(A), by inserting
13 “sexual orientation, gender identity,” before “or
14 national origin,”; and

15 (B) in subsection (d)(1), by inserting “sex-
16 ual orientation, gender identity,” before “or na-
17 tional origin;”.

18 **SEC. 5. HOUSING DISCRIMINATION PROHIBITED.**

19 (a) IN GENERAL.—

20 (1) Section 804 of the Fair Housing Act (42
21 U.S.C. 3604) is amended by inserting “sexual ori-
22 entation, gender identity,” after “sex” each place
23 that term appears.

24 (2) Section 805 of the Fair Housing Act (42
25 U.S.C. 3605) is amended by inserting “sexual ori-

1 entation, gender identity,” after “sex” each place
2 that term appears.

3 (3) Section 806 of the Fair Housing Act (42
4 U.S.C. 3606) is amended by inserting “sexual ori-
5 entation, gender identity,” after “sex” each place
6 that term appears.

7 (4) Section 807 of the Fair Housing Act (42
8 U.S.C. 3607) is amended by inserting “or to persons
9 who adhere to its religious beliefs, observances, te-
10 nets, or practices” immediately after the phrase “of
11 the same religion” and “or adherence to such be-
12 liefs, observances, tenets, or practices” immediately
13 before “is restricted.”

14 (5) Section 808 of the Fair Housing Act (42
15 U.S.C. 3608) is amended by inserting “sexual ori-
16 entation, gender identity,” after “sex” each place
17 that term appears.

18 (b) PREVENTION OF INTIMIDATION.—Section 901 of
19 the Civil Rights Act of 1968 (42 U.S.C. 3631) is amended
20 by inserting “sexual orientation, gender identity,” after
21 “sex,” each place that term appears.

22 (c) DEFINITIONS.—Section 802 of the Fair Housing
23 Act (42 U.S.C. 3602) is amended by adding at the end
24 the following:

1 “(p) ‘Sexual orientation’ means homosexuality, het-
2 erosexuality, or bisexuality.

3 “(q) ‘Gender identity’ means the gender-related iden-
4 tity, appearance, mannerisms, or other gender-related
5 characteristics of an individual, without regard to the indi-
6 vidual’s designated sex at birth. A person’s gender identity
7 can be shown by providing evidence, including medical his-
8 tory, care or treatment of the gender identity, consistent
9 and uniform assertion of the gender identity, or other evi-
10 dence that the gender identity is sincerely held, part of
11 a person’s core identity, and not being asserted for an im-
12 proper purpose.

13 “(r) ‘Operates’ includes the rental or occupancy of
14 dwellings through a lease or contract with the dwelling’s
15 actual owner or primary operator.

16 “(s) ‘Religion’ has the same meaning as section 701
17 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

18 “(t) ‘Religious organization, association, or society’
19 has the same meaning as section 701 of the Civil Rights
20 Act of 1964 (42 U.S.C. 2000e).”.

21 **SEC. 6. OTHER NONDISCRIMINATION REQUIREMENTS.**

22 (a) MARRIAGE RECOGNITION.—

23 (1) Section 7 of title 1, United States Code, is
24 amended to read as follows:

1 **“§ 7. Marriage**

2 “(a) For the purposes of any Federal law in which
3 marital status is a factor, an individual shall be considered
4 married if that individual’s marriage is valid in the State
5 where the marriage was entered into or, in the case of
6 a marriage entered into outside any State, if the marriage
7 is valid in the place where entered into and the marriage
8 could have been entered into in a State.

9 “(b) In this section, the term ‘State’ means a State,
10 the District of Columbia, the Commonwealth of Puerto
11 Rico, or any other territory or possession of the United
12 States.”; and

13 (2) Section 1738C of title 28, United States
14 Code, is repealed, and the table of sections at the be-
15 ginning of chapter 115 of title 28, United States
16 Code, is amended by striking the item relating to
17 that section.

18 (b) DESEGREGATION OF PUBLIC FACILITIES.—Sec-
19 tion 301(a) of the Civil Rights Act of 1964 (42 U.S.C.
20 2000b(a)) is amended by inserting “sex, sexual orienta-
21 tion, gender identity,” before “or national origin”.

22 (c) DISCRIMINATION IN FEDERAL JURY SERVICE
23 PROHIBITED.—Chapter 121 of title 28, United States
24 Code, is amended—

1 (1) in section 1862, by inserting “sexual ori-
2 entation, gender identity,” after “sex,” each place
3 that term appears;

4 (2) in section 1867, by inserting “sexual ori-
5 entation, gender identity,” after “sex,” each place
6 that term appears; and

7 (3) in section 1869 by adding at the end the
8 following:

9 “(l) The term ‘sexual orientation’ means homosex-
10 uality, heterosexuality, or bisexuality.

11 “(m) The term ‘gender identity’ means the gender-
12 related identity, appearance, mannerisms, or other gender-
13 related characteristics of an individual, without regard to
14 the individual’s designated sex at birth. A person’s gender
15 identity can be shown by providing evidence, including
16 medical history, care or treatment of the gender identity,
17 consistent and uniform assertion of the gender identity,
18 or other evidence that the gender identity is sincerely held,
19 part of a person’s core identity, and not being asserted
20 for an improper purpose.”.

21 (d) DISCRIMINATION IN CREDIT PROHIBITED.—The
22 Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.)
23 is amended—

1 (1) in section 701(a)(1) by striking “or” after
2 “sex” and inserting “, sexual orientation, gender
3 identity,” after “sex”;

4 (2) in section 702—

5 (A) by redesignating subsections (f) and
6 (g) as subsections (g) and (i), respectively;

7 (B) by inserting after subsection (e) the
8 following:

9 “(f) The term ‘gender identity’ means the gender-re-
10 lated identity, appearance, mannerisms, or other gender-
11 related characteristics of an individual, without regard to
12 the individual’s designated sex at birth. A person’s gender
13 identity can be shown by providing evidence, including
14 medical history, care or treatment of the gender identity,
15 consistent and uniform assertion of the gender identity,
16 or other evidence that the gender identity is sincerely held,
17 part of a person’s core identity, and not being asserted
18 for an improper purpose.”; and

19 (C) by inserting after subsection (g), as so
20 redesignated, the following:

21 “(h) The term ‘sexual orientation’ means homosex-
22 uality, heterosexuality, or bisexuality.”; and

23 (3) in section 705, by inserting “, sexual ori-
24 entation, gender identity,” after “sex”.

1 (e) DISCRIMINATION IN REFUGEE RESETTLEMENT
2 PROHIBITED.—Section 412(a)(5) of the Immigration and
3 Nationality Act (8 U.S.C. 1522(a)(5)) is amended by in-
4 serting “sexual orientation, gender identity,” after “sex,”.

5 (f) SAFE SCHOOLS.—Title IV of the Elementary and
6 Secondary Education Act of 1965 (20 U.S.C. 7101 et
7 seq.) is amended by adding at the end the following:

8 **“PART G—SAFE SCHOOLS IMPROVEMENT**

9 **“SEC. 4701. PURPOSE.**

10 “The purpose of this part is to address the problem
11 of bullying and harassment conduct of students in public
12 elementary schools and secondary schools.

13 **“SEC. 4702. ANTI-BULLYING POLICIES.**

14 “(a) BULLYING.—In this part, the term ‘bullying’ in-
15 cludes cyber-bullying through electronic communications
16 that take place away from school or a school-sponsored
17 or school-related event, but only if the cyber-bullying in-
18 fringes on the rights of the student at school as set forth
19 in subparagraph (A) or (B) of subsection (b)(1).

20 “(b) POLICIES.—A State that receives a grant under
21 this title shall require all local educational agencies in the
22 State with authority to administer public elementary and
23 secondary schools to carry out the following:

24 “(1) Establish policies that prevent and prohibit
25 conduct, including bullying and harassment—

1 “(A) that is sufficiently severe, persistent,
2 or pervasive that a reasonable person would ex-
3 pect such bullying or harassment to limit a stu-
4 dent’s ability to participate in, or benefit from,
5 a program or activity of a public school or local
6 educational agency; or

7 “(B) that is sufficiently severe, persistent,
8 or pervasive that a reasonable person would ex-
9 pect such bullying or harassment to create a
10 hostile or abusive educational environment, ad-
11 versely affecting a student’s education, at a
12 program or activity of a public school or local
13 educational agency, including acts of verbal,
14 nonverbal, or physical aggression or intima-
15 tion.

16 “(2) The policies required under paragraph (1)
17 shall include a prohibition of bullying or harassment
18 conduct based on—

19 “(A) a student’s actual or perceived race,
20 color, national origin, religion, disability, sex,
21 sexual orientation, or gender identity;

22 “(B) the actual or perceived race, color,
23 national origin, religion, disability, sex, sexual
24 orientation, or gender identity of a person with
25 whom a student associates or has associated; or

1 “(C) any other distinguishing characteris-
2 tics that may be defined by the State or local
3 educational agency, including being homeless or
4 the child or ward of a member of the Armed
5 Forces.

6 “(3) Provide—

7 “(A) annual notice to students, parents,
8 and educational professionals describing the full
9 range of the local educational agency’s policies
10 required under paragraph (1) and shall include
11 an affirmative statement of the protections for
12 free speech, assembly, and expression under the
13 First Amendment and any other applicable law;
14 and

15 “(B) grievance procedures for students or
16 parents to register complaints regarding the
17 prohibited conduct contained in such local edu-
18 cational agency’s discipline policies, including—

19 “(i) the name of the local educational
20 agency officials who are designated as re-
21 sponsible for receiving such complaints;
22 and

23 “(ii) timelines that the local edu-
24 cational agency will establish in the resolu-
25 tion of such complaints.

1 “(4) Collect annual incidence and frequency of
2 incidents data about the conduct prohibited by the
3 policies described in paragraph (1) at the school
4 building level that are accurate and complete and
5 publicly report such data at the school level and
6 local educational agency level. The local educational
7 agency shall ensure that victims or persons respon-
8 sible for such conduct are not identifiable.

9 “(5) Encourage positive and preventative ap-
10 proaches to school discipline that minimize students’
11 removal from instruction and ensure that students,
12 including students described in paragraph (2), are
13 not subject to disproportionate punishment.

14 **“SEC. 4703. STATE REPORTS.**

15 “The chief executive officer of a State that receives
16 a grant under this title, in cooperation with the State edu-
17 cational agency, shall submit a biennial report to the Sec-
18 retary—

19 “(1) on the information reported by local edu-
20 cational agencies in the State pursuant to section
21 4702(b)(4); and

22 “(2) describing the State’s plans for supporting
23 local educational agency efforts to address the con-
24 duct prohibited by the policies described in section
25 4702(b)(1).

1 **“SEC. 4704. EVALUATION.**

2 “(a) **BIENNIAL EVALUATION.**—The Secretary shall
3 conduct an independent biennial evaluation of programs
4 and policies to combat bullying and harassment in elemen-
5 tary schools and secondary schools, including implementa-
6 tion of the requirements described in section 4702, includ-
7 ing whether such requirements have appreciably reduced
8 the level of the prohibited conduct and have conducted ef-
9 fective parent involvement and programs that train cov-
10 ered school employees how to identify and stop bullying
11 and harassment, as those terms are defined in section
12 4702.

13 “(b) **DATA COLLECTION.**—The Commissioner for
14 Education Statistics shall collect data from States, that
15 are subject to independent review, to determine the inci-
16 dence and frequency of conduct prohibited by the policies
17 described in section 4702.

18 “(c) **BIENNIAL REPORT.**—Not later than January 1
19 of the first calendar year that begins after the effective
20 date of this section and every 2 years thereafter, the Sec-
21 retary shall submit to the President and Congress a report
22 on the findings of the evaluation conducted under sub-
23 section (a) together with the data collected under sub-
24 section (b) and data submitted by the States under section
25 4703.

1 **"SEC. 4705. EFFECT ON OTHER LAWS.**

2 “(a) FEDERAL AND STATE NONDISCRIMINATION
3 LAWS.—Nothing in this part shall be construed to invali-
4 date or limit rights, remedies, procedures, or legal stand-
5 ards available to victims of discrimination under any other
6 Federal law or law of a State or political subdivision of
7 a State, including title VI of the Civil Rights Act of 1964
8 (42 U.S.C. 2000d et seq.), title IX of the Education
9 Amendments of 1972 (20 U.S.C. 1681 et seq.), section
10 504 or 505 of the Rehabilitation Act of 1973 (29 U.S.C.
11 794, 794a), or the Americans with Disabilities Act of 1990
12 (42 U.S.C. 12101 et seq.). The obligations imposed by this
13 part are in addition to those imposed by title VI of the
14 Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title
15 IX of the Education Amendments of 1972 (20 U.S.C.
16 1681 et seq.), section 504 of the Rehabilitation Act of
17 1973 (29 U.S.C. 794), and the Americans with Disabil-
18 ities Act of 1990 (42 U.S.C. 12101 et seq.).

19 “(b) FREE SPEECH AND EXPRESSION.—Nothing in
20 this part shall be construed to deny any student a right
21 of free speech, assembly, or expression protected under the
22 Constitution or any other Federal law, or to permit unlaw-
23 ful viewpoint discrimination. No policy established under
24 this part may prevent or punish a student’s expression of
25 religious, political, or philosophical beliefs in the classroom
26 or at school activities when such expression takes place

1 on equal terms with similar expressions of belief allowed
2 by the school in the same setting.

3 **“SEC. 4706. RULE OF CONSTRUCTION.**

4 “Nothing in this part shall be construed to prohibit
5 a State or local entity from enacting any law with respect
6 to the prevention of bullying or harassment of students
7 that is not inconsistent with this part.”.

8 **SEC. 7. PROHIBITION ON RETALIATION AND UNEQUAL**
9 **TREATMENT.**

10 Title XI of the Civil Rights Act of 1964 (42 U.S.C.
11 2000h et seq.) is amended by adding at the end the fol-
12 lowing:

13 **“SEC. 1107. NONRETALIATION.**

14 “(a) IN GENERAL.—

15 “(1) No government shall take any adverse ac-
16 tion because of—

17 “(A) the existence or invocation of any ex-
18 emption, defense, or remedy under this Act; or

19 “(B) the existence or invocation of any
20 protection from discrimination under this Act.

21 “(2) Nothing in this subsection shall be con-
22 strued to invalidate or supersede a law without evi-
23 dence that it was enacted, enforced, or administered
24 for reasons prohibited by paragraph (1).

1 “(b) PROHIBITION ON CERTAIN GOVERNMENT AC-
2 TIONS.—

3 “(1) PERSONS PROTECTED FROM DISCRIMINA-
4 TION.—No government shall take any adverse action
5 that, as applied, conflicts with any protection from
6 discrimination under this Act.

7 “(2) CERTAIN RELIGIOUS PROPERTIES AND RE-
8 LIGIOUS EMPLOYERS.—

9 “(A) No government shall take any ad-
10 verse action that, as applied, is inconsistent
11 with the exemptions under section 201(b)(11).

12 “(B) No government shall take any ad-
13 verse action that, as applied, abridges the ex-
14 emptions provided under section 702(a)(2)(B).

15 “(C) Nothing in this subsection shall be
16 construed to invalidate any other law that oth-
17 erwise applies to a religious property exempt
18 under section 201(b)(11) or a religious em-
19 ployer exempt under section 702(a)(2)(B).

20 “(3) ADOPTION AND FOSTER CARE FUNDING,
21 LICENSURE, AND CERTIFICATION.—No State shall
22 enforce a law with respect to a particular contract,
23 cooperative agreement, grant, guarantee, or benefit
24 if that law, as applied, abridges any right or benefit
25 under section 610, unless the State demonstrates

1 that the contract, cooperative agreement, grant,
2 guarantee, or benefit is solely funded by revenues of
3 a State or political subdivision thereof. A State or
4 its political subdivision may commingle its revenues
5 with Federal financial assistance for the purpose of
6 providing financial aid to adoption agencies; such
7 commingled revenues shall be deemed Federal finan-
8 cial assistance. No government may deny, withhold,
9 or suspend the license or certification of a religiously
10 affiliated adoption or foster care agency because of
11 its religious teachings or practices, provided that the
12 agency complies with generally applicable health and
13 safety standards.

14 “(c) RELIGIOUS EDUCATIONAL INSTITUTIONS.—

15 “(1) NO ADVERSE ACTION FOR RELIGIOUS MIS-
16 SION.—No government shall take any adverse action
17 against a religious educational institution, its fac-
18 ulty, students, or graduates because of its religious
19 mission.

20 “(2) ACCREDITATION.—No accrediting agency
21 shall take an adverse action against a religious edu-
22 cational institution for noncompliance with an ac-
23 creditation standard that would require the institu-
24 tion to act inconsistently with its religious mission
25 as related to marriage, family, sexuality, or gender

1 identity, except as these matters pertain to race,
2 color, or national origin. Nothing in this provision
3 shall be interpreted to deny an accrediting agency
4 the authority under section 496(a) of the Higher
5 Education Act (20 U.S.C. 1099b(a)) to take action
6 necessary to ensure that the courses or programs of
7 instruction, training, or study offered by an institu-
8 tion of higher education are of sufficient quality to
9 achieve the stated objective for which the courses or
10 the programs are offered. An accrediting agency
11 does not demonstrate that its adverse action against
12 a religious educational institution is authorized
13 under section 1099b(a) merely by showing that the
14 action results from a rule of general applicability.

15 “(3) REMEDIES.—A religious educational insti-
16 tution harmed by a violation of this subsection may
17 obtain injunctive relief against the responsible ac-
18 crediting agency. Upon receiving a copy of such an
19 injunction, the Department of Education shall deem
20 the affected religious educational institution as ac-
21 credited for all purposes under Federal law. The De-
22 partment shall deny recognition for any purpose to
23 an accrediting agency that knowingly violates this
24 subsection. An accrediting agency that loses its gov-
25 ernment recognition may apply with the Department

1 to restore its recognition if the agency demonstrates
2 that the violation resulted from mistake or inadvert-
3 ence. Within two years of the enactment of this Act,
4 the Department shall issue final rules prescribing
5 the procedures governing this section.

6 “(d) NO RELIGIOUS TESTS.—No government shall—

7 “(1) exclude a person from an occupation by
8 depriving a person of professional credentials or im-
9 posing a fine or penalty, including through a private
10 right of action, because of the person’s religious be-
11 liefs or affiliations, provided that the person other-
12 wise complies with occupational or professional
13 standards that, in purpose and effect, are neutral to-
14 ward religion and generally applicable; or

15 “(2) determine eligibility for public office be-
16 cause of religious beliefs or affiliations.

17 “(e) SCOPE OF APPLICATION.—Subsections (a)
18 through (d) apply in any case in which—

19 “(1) section 5 of the Fourteenth Amendment to
20 the Constitution of the United States grants law-
21 making power to Congress;

22 “(2) action by a government or an accrediting
23 agency would affect commerce with foreign nations,
24 among the several States, or with Indian Tribes;

1 “(3) a State or political subdivision receives
2 Federal financial assistance, to the full extent per-
3 mitted by Congress’ authority under the Spending
4 Power in article I, section 8 of the Constitution;

5 “(4) Congress has power under the Necessary
6 and Proper Clause of article I, section 8 to effec-
7 tuate the exercise of its enumerated powers; or

8 “(5) the Constitution grants Congress any
9 other lawmaking power.

10 “(f) JUDICIAL RELIEF.—

11 “(1) CAUSE OF ACTION.—A person or organiza-
12 tion may assert an actual violation of this section,
13 or a credible threat of such a violation, as a claim
14 or defense in a judicial, administrative, or arbitra-
15 tion proceeding and obtain appropriate relief against
16 a government or accrediting agency, including attor-
17 neys’ fees. A State shall not be immune under the
18 Eleventh Amendment to the Constitution of the
19 United States from a claim under this section.

20 “(2) REMOVAL.—Any proceeding brought in a
21 State court for which a claimant invokes this section
22 as a claim, counterclaim, or defense may be removed
23 by the claimant to the district court of the United
24 States for the district and division embracing the
25 place where such action is pending.

1 “(g) DEFINITIONS.—In section 1107:

2 “(1) The term ‘abridges’ means to diminish,
3 burden, hinder, or obstruct.

4 “(2) The term ‘accreditation’ means the status
5 of public recognition that an accrediting agency
6 grants to an educational institution or program that
7 meets the agency’s standards and requirements.

8 “(3) The term ‘accrediting agency’ means a
9 legal entity, or part of a legal entity, that conducts
10 accrediting activities through voluntary, non-Federal
11 peer review and makes decisions concerning the ac-
12 creditation or preaccreditation status of institutions,
13 programs, or both.

14 “(4) The term ‘adverse action’ includes action
15 that suspends, revokes, or withholds licenses, per-
16 mits, certifications, professional credentials, guaran-
17 tees, contracts, or cooperative agreements; denies or
18 revokes scholarships, grants, loans, a tax exemption
19 or tax-exempt status; denies access to government-
20 sponsored facilities, activities, or programs; or that
21 imposes any other penalty or denies an otherwise
22 available benefit. Except for a violation of subsection
23 (a)(1) of this section, adverse action does not include
24 a State’s refusal to subsidize contracts, grants,
25 loans, or cooperative agreements with exclusively

1 State revenues because of noncompliance with State
2 standards that, in purpose and effect, are neutral to-
3 ward religion and generally applicable. Commingled
4 State and Federal revenues shall be deemed Federal
5 revenues. Adverse action does include suspending,
6 revoking, or withholding scholarships, grants, and
7 loans, or access to government-sponsored facilities,
8 activities, or programs to qualified students or grad-
9 uates of religious educational institutions, notwith-
10 standing that the scholarships, grants, loans, facili-
11 ties, activities, or programs are funded with State
12 revenues.

13 “(5) The term ‘government’ means—

14 “(A) a State, county, municipality, or
15 other government entity created under the au-
16 thority of a State;

17 “(B) any branch, department, agency, in-
18 strumentality, or official of an entity listed in
19 subsection (g)(5)(A);

20 “(C) any other person acting under color
21 of State law; and

22 “(D) the United States, a branch, depart-
23 ment, agency, instrumentality, or official of the
24 United States, and any other person acting
25 under color of Federal law.

1 “(6) The terms ‘religion’ and ‘religious’ include
2 all aspects of religious belief, observance, and prac-
3 tice, whether or not compelled by, or central to, a
4 system of religion.

5 “(7) The term ‘religious corporation, associa-
6 tion, educational institution, or society’ include—

7 “(A) a church, synagogue, mosque, temple,
8 or other house of worship;

9 “(B) a nonprofit corporation, association,
10 educational institution, society, or other non-
11 profit entity that is, in whole or in substantial
12 part, owned, supported, controlled, or managed
13 by a particular religion or by a particular
14 church, denomination, convention, or associa-
15 tion of churches or other houses of worship; or

16 “(C) a nonprofit corporation, association,
17 educational institution, society, or other non-
18 profit entity that holds itself out to the public
19 as substantially religious, has as its stated pur-
20 pose in its organic documents that it is reli-
21 gious, and is substantially religious in its cur-
22 rent operations.

23 “(8) The term ‘religious educational institution’
24 means any organization covered by section
25 703(c)(2).

1 “(9) The term ‘religious mission’ includes reli-
2 gious affiliation, religious tenets, religious teachings,
3 and religious standards, including policies or deci-
4 sions related to such affiliation, tenets, teachings, or
5 standards with respect to housing, employment, cur-
6 riculum, self-governance, or student admission, con-
7 tinuing enrollment, or graduation.

8 “(h) CONSTRUCTION.—This section shall supersede
9 State or local law as provided for expressly herein. Noth-
10 ing contained in section 1107 shall be construed as indi-
11 cating an intent on the part of Congress to occupy the
12 field in which this Act operates to the exclusion of State
13 or local laws on the same subject matter.”.

14 **SEC. 8. PRESERVATION OF TAX-EXEMPT STATUS.**

15 Section 501(c)(3) of the Internal Revenue Code (26
16 U.S.C. 1, et seq.) is amended—

17 (1) by inserting “(A)” before “Corporations,
18 and community chest . . .”; and

19 (2) by adding at the end the following:

20 “(B)(i) For purposes of Federal law, any deter-
21 mination whether an organization is organized or op-
22 erated exclusively for religious, charitable, scientific,
23 literary, or educational purposes or complies with
24 legal standards of charity shall be made without re-
25 gard to the organization’s religious beliefs or prac-

1 tices concerning marriage, family, or sexuality, ex-
2 cept insofar as such practices pertain to race or
3 criminal sexual offenses punishable under constitu-
4 tionally valid Federal or State law.

5 “(ii) As used in subsection (B)(i), the term ‘re-
6 ligious’ includes all aspects of religious belief, ob-
7 servance, and practice, whether or not compelled by,
8 or central to, a system of religion.”.

9 **SEC. 9. SEVERABILITY.**

10 If any provision of this Act, or the application of any
11 provision to any individual or circumstance, is held to be
12 invalid, the remainder of this Act and the application of
13 its other provisions to any other individuals or cir-
14 cumstances shall not be affected thereby.